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Via ECFS

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25;  
Business Data Services in an Internet Protocol Environment, WC Docket No. 16-143**

Dear Ms. Dortch:

Cox Communications, Inc. (“Cox”) files this *ex parte* notice to address the scope of the grandfathering provisions set forth in the proposed *BDS Report and Order* released on March 30, 2017.<sup>1</sup>

The Federal Communications Commission’s proposed *BDS Report and Order* would impose mandatory detariffing within 18 months on all DS1 and DS3 transport, and on all DS1 and DS3 channel terminations in markets deemed competitive.<sup>2</sup> Incumbent local exchange carriers (“ILECs”) and other providers would be permitted to withdraw tariffs in the interim. The Commission recognizes that the withdrawal of tariffs will have a disruptive effect and therefor proposes to grandfather “existing contractual or other long-term arrangements.”<sup>3</sup> Although the text of the draft *BDS Report and Order* references “other long-term arrangements,” the proposed grandfathering rule is limited to contract-based tariffs.<sup>4</sup>

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<sup>1</sup> Draft *BDS Report and Order*, ¶ 163.

<sup>2</sup> *Id.* at ¶¶ 154, 160-161.

<sup>3</sup> *Id.* at ¶ 163.

<sup>4</sup> See proposed rule 1.776:

**§ 1.776 Pricing flexibility limited grandfathering.**

Special access contract-based tariffs that were in effect on or before the effective date of the rules adopted in [[FCC 17-XXX, Effective [INSERT EFFECTIVE DATE FROM PUBLICATION IN FEDERAL REGISTER]]] are grandfathered. Such contract-based tariffs may not be extended, renewed or revised. Upon mutual agreement, parties to a grandfathered contract-based tariff may replace it at any time with a new contract-based

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Cox is concerned that the proposed grandfathering rule could be interpreted to exclude tariffed term plans that may not fall within the category of contract-based tariffs. Cox therefore respectfully requests that the Commission clarify that all tariffed term plans be grandfathered.

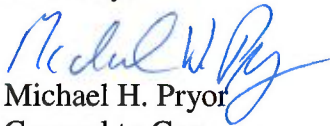
ILEC special access tariffs typically provide term plans that are not contained within the contract section of the tariff. Southwestern Bell, for example, offers numerous contract-based tariffs in section 41 of its tariff, entitled Pricing Flexibility Contract Offerings. Many carriers, however, purchase DS1 services from general term plans contained in special access section of the tariff, such as Southwestern Bell's DS1 term pricing plan ("DS1 TPP"), which offers terms of 1, 2, 3, 5, or 7 years.<sup>5</sup> To the extent that the Commission's proposed grandfathering rule could be interpreted to draw a distinction between contract-based tariff offerings and general tariffed term plans for special access services, Cox requests that the Commission eliminate any such distinction and grandfather all special access tariffed term plans. In this way, the intent reflected in paragraph 163 of the proposed *BDS Report and Order* to protect carriers' reasonable expectations regarding tariffed commitments will not be subject to an inconsistent reading of the grandfathering rule.

Cox thus proposes the following revision to rule 1.776.

Special access contract-based tariffs **and tariffed term plans** that were in effect on or before the effective date of the rules adopted in [[FCC 17-XXX, Effective [INSERT EFFECTIVE DATE FROM PUBLICATION IN FEDERAL REGISTER]]] are grandfathered. Such contract-based tariffs **and tariffed term plans** may not be extended, renewed or revised. Upon mutual agreement, parties to a grandfathered contract-based tariff **or tariffed term plan** may replace it at any time with a new contract-based tariff negotiated under the rules adopted in [[FCC 17-XXX, Effective [INSERT EFFECTIVE DATE FROM PUBLICATION IN FEDERAL REGISTER]]].

Please contact the undersigned if have any questions.

Sincerely,



Michael H. Pryor  
Counsel to Cox

MHP:vcd

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tariff negotiated under the rules adopted in [[FCC 17-XXX, Effective [INSERT EFFECTIVE DATE FROM PUBLICATION IN FEDERAL REGISTER]]].

<sup>5</sup> Southwestern Bell FCC Tariff No. 73, Section 7.2.22. A number of these types of tariffed term plans were the subject of the Commission's tariff investigation order.